

1981

# The Board of Education of The Granite School District, A Body Politic of The State of Utah v. Salt Lake County, A Body Corporate And Politic And Arthur Monson, Salt Lake County Treasurer : Brief of Defendants/Respondents/Cross-Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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THE BOARD OF EDUCATION OF :  
THE GRANITE SCHOOL DISTRICT, :  
a body politic of the State :  
of Utah, :

Plaintiff/Appellant, :

v. :

Case No. 17175

SALT LAKE COUNTY, a body :  
corporate and politic, and :  
ARTHUR MONSON, Salt Lake :  
County Treasurer, :

Defendants/Respondents/:  
and Cross-Appellants, :

---

BRIEF OF DEFENDANTS/RESPONDENTS/CROSS-APPELLANTS

---

APPEAL FROM THE TRIAL AND JUDGMENT  
OF THE THIRD JUDICIAL DISTRICT COURT IN AND FOR THE  
STATE OF UTAH

---

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Clark, Supreme Court, Utah

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STATEMENT OF THE NATURE OF THE CASE

This is an equitable action by plaintiff-appellant, Granite School District, a political subdivision of the State of Utah (herein referred to as Granite), against defendants/respondents/cross-appellants, Salt Lake County, also a political subdivision of the State of Utah (herein referred to as County), and Arthur L. Monson, who has held the statutory office of Salt Lake County Treasurer since January, 1975 (herein referred to as Treasurer). Granite asserts that the Treasurer did not turn over Granite's share of real property tax monies collected for the years 1973-1974 (First Cause of Action), 1974-1975 (Second Cause of Action), 1975-1976 (Third Cause of Action) and 1976-1977 (Fourth Cause of Action) in a timely manner as the Statutes require.

The action also involves a Counterclaim filed by County to recover against Granite those monies actually expended by County in behalf of Granite to assess, collect, apportion and distribute tax monies to Granite in excess of the amount actually paid by Granite for such services during the same period of time. Said Counterclaim also sought recovery of the amount of unjust enrichment realized by Granite at the expense of the other taxing districts because

of early turn-over of funds to Granite.

#### DISPOSITION IN LOWER COURT

Granite filed an Alias Second Amended Complaint against County and Treasurer seeking judgment on each cause of action for that income earned or which should have been earned by County and Treasurer from the Treasurer's investing of tax monies collected by his office. Granite also sought an injunction to compel the Treasurer to pay over all monies due within the time required by State law.

County and Treasurer filed a Counterclaim seeking to recover those funds expended by County in excess of the sums paid by Granite to collect, apportion and distribute tax monies to Granite. Treasurer also asserted in said Counterclaim that because of early turn over of tax monies to Granite by Treasurer, that Granite became unjustly enriched at the expense of certain other taxing districts located within Salt Lake County to the extent Granite realized investment income on said funds.

The Trial Court ruled that Salt Lake County was not unjustly enriched by the actions of the Treasurer at the expense of Granite School District. It further ruled that Granite was not unjustly enriched at the expense of Salt

Lake County even though the cost of collecting, apportioning and distributing tax monies to Granite exceeded the amount paid for said services by Granite. The Court also determined that the Treasurer, Monson, had performed his duties in accordance with the Statutes governing his office and in the manner set forth by the State Tax Commission of Utah.

#### RELIEF SOUGHT ON APPEAL

Salt Lake County and the Salt Lake County Treasurer seek affirmance of the decision of the Trial Court insofar as it determined that the County had not been unjustly enriched through the actions of the Treasurer at the expense of Granite and that the Treasurer has performed his duties in accordance with the Statutes governing his office and as set forth by the State Tax Commission of Utah.

The County seeks reversal of that portion of the Trial Court's decision which denies recovery to the County even though the cost of collecting, apportioning, and distributing tax monies to Granite School District exceeds the amount paid for such services by Granite.

#### STATEMENT OF FACTS

County and Treasurer object to the purported Statement of Facts as set forth in Granite's Brief. The

purported "Summary of Facts" is nothing more than a statement of Granite's misconceived perception of the case, its position and the relief Granite seeks. It is not a statement of the actual facts, summary or otherwise. The "Statement of Facts in Detail" submitted by Granite contains, for the most part, conclusions, argument, theory, suppositions, assumptions, and proposed solutions, but very few facts.

Granite and County are 2 of 48 public taxing entities located within Salt Lake County for which the Treasurer collects and distributes funds (T-429). The 48 separate taxing entities contain 130 separate taxing districts each of which has its own separate mill levy. Within these districts and entities are over 200,000 separate assessable properties upon which a tax must be levied, collected and distributed (T-430).

During the year the Treasurer receives checks and monies from many sources, including monies from Salt Lake County taxpayers within the taxing jurisdiction of each of the 48 entities and 130 districts. During the latter part of November of each year, up to and including the 30th day of November, said Treasurer receives checks and monies for

real property taxes which are deposited by him (T-430).

Because of the large number of taxpayers, entities and districts involved, the funds were first deposited for collection and then separated at a later time when proper identification of funds could be made. There was no capability during the years in question to separate, segregate and separately identify funds received when and as paid (T-430). The Treasurer receives monies from several sources including sales taxes, personal property taxes, real property taxes, licenses, revenue sharing and bail forfeitures. As soon as he receives the money, he deposits it. He does not identify it as property tax money or sales tax money or any kind of money at the time of the deposit (T-56). Until he is charged through final settlement by the Salt Lake County Auditor, he is unable to ascertain with certainty the exact amount of funds collected for each entity or district (T-67). He does not know, at the time of collection, how much money is due and owing to each entity or district. To the best of his ability he estimates in order to advance monies to the districts, but he does not know, and will not know until charged, how much he collected for each district (T-66). He instructs his employees "...to compute to the extent they can the amount that the district has coming..." (T-66). The

Treasurer's employees improve on the estimation each year. "The challenge is to come as close as they can to meet final settlement. We compute and meet final settlement on March 31st without being charged, and when we are finally charged, to see how close we come. And so, the formula is being refined every year." (T-67-68). No evidence was presented at trial to establish that the Treasurer, at the time of collection, was capable of separate segregation or identification of the monies to specific taxing entities as the same were received (T-431).

The evidence is further uncontroverted that numerous large institutional taxpayers draw tax payment checks on out of State banks, thereby extending the time within which said funds are finally cleared and in the hands of the Salt Lake County Treasurer. Even though checks have been received or postmarked as of the 30th of November of each year, said checks may not have cleared the bank and become good funds in the hands of the Treasurer until sometime after said checks were deposited by the Treasurer (T-431). Even though such funds are deposited immediately, segregation and identification of payment to property and therefore district, takes place at a later date (T-66). In

that regard, the Treasurer acts as a fiduciary for all of the public entities located within Salt Lake County, including Granite School District and Salt Lake County (T-432).

Prior to the date of final settlement, there are numerous activities that take place with regard to the assessment roll and the tax collection process that affect the amount of taxes collected and, therefore, renders it impractical for the Treasurer to know on any given date, exactly how much money he has on hand for each of the public taxing entities. These activities occur in each of the 48 separate taxing entities in Salt Lake County. Included in such activities that affect the amount ultimately collected are actions by the Salt Lake County Board of Equalization in raising and lowering assessments; the collection process related to attached and unattached personal property; actions of the State Tax Commission of Utah acting on appeals; indigent abatements, veterans abatements, and blind abatements; refund actions for taxes illegally or erroneously paid or collected and Treasurer's relief, unpaid taxes and tax sales are all activities that affect the assessment roll, the collection process and the amounts collected, which render it impractical for the Treasurer, on



any given date prior to final settlement, to ascertain exactly how much money he should have on hand and how much of said money belongs to each of the various 48 public taxing entities located within Salt Lake County (T-432-433).

Plaintiff's original Complaint contained two causes of action. The First Cause of Action sought damages by way of recovery of monies Granite would have earned had it received earlier turn over of funds and also sought compensation for the cost of tax anticipation borrowing for the year 1973-1974. The Second Cause of Action was identical, except it involved the years 1974-1975 (T-2-6).

Plaintiff's Amended Complaint filed May 11, 1976, was substantially the same as the original Complaint, but included the tax year 1975-1976 and an additional damage claim for 1975 (T-14-19).

On February 3, 1977, Granite filed a Motion for Summary Judgment. The Court granted Granite's Motion for Summary Judgment on the liability issue, but reserved the issue of damages (T-124-125).

After several hearings before the Court, Granite filed a Motion for Leave to File a Second Amended Complaint. The reason stated for the Motion was to include tax collec-

tions for the 1976 tax year (T-334). In a hearing before the Trial Court on September 19, 1978, it was agreed by the parties that the action was an action in equity rather than in law. Plaintiff, Granite, was granted leave to amend its Complaint to plead its case in equity (T-455-462).

On the 16th day of October, 1978, another hearing was held before the Trial Judge for purposes of stipulating to the issues to be tried. The Second Amended Complaint was withdrawn and plaintiff was granted leave to file a new Second Amended Complaint and defendant was granted ten days to respond with the plaintiff filing a reply ten days after the defendants' Answer and Counterclaim (T-336).

Granite's Alias Second Amended Complaint was filed on the 27th day of November, 1978. It was complete in and of itself. That Complaint was an entirely new lawsuit from the ones previously filed. It was an action in equity (T-237-243). Plaintiffs had never filed a Notice of Claim with Salt Lake County on any of the years in question (T-297-299), therefore, they had to change the entire theory of their case in order to try to avoid the legal affect of the failure to file such a claim. Defendants filed an Answer and Counterclaim to Granite's Alias Second Amended Complaint. County's Counterclaim also proceeded on an

equitable theory. The Treasurer, in his efforts to accommodate Granite during the years in question, had made advancements of tax monies in excess of the amounts that were actually collected for Granite at that point in time.

The Trial Court determined that there was no evidence presented by Granite at Trial to show the exact dollar amount on deposit for Granite School District on any given day during the period of time covered in Granite's Alias Second Amended Complaint. The Trial Court also found the evidence to be uncontroverted that Salt Lake County, during the years 1973, 1974, 1975, 1976, and 1977, expended \$1,133,415.00 more to collect, apportion and distribute tax monies to Granite than was paid for by Granite (T-434).

## ARGUMENT

### POINT I

GRANITE'S ALIAS SECOND AMENDED COMPLAINT  
RENDERED ALL PREVIOUS PROCEEDINGS,  
INCLUDING THE PARTIAL SUMMARY JUDGMENT,  
NULL AND VOID.

Judge Winder, pursuant to Motion and argument, granted Granite a Partial Summary Judgment on its Amended Complaint. Nearly sixteen months later, after several Court hearings, Granite, after receiving leave of Court, filed an

Alias Second Amended Complaint. The Alias Second Amended Complaint was directed towards shifting the theory of plaintiff's case from one at law to one in equity. The theory of the case under Judge Winder was in the nature of damages allegedly suffered by Granite because of claimed late turn-over of funds. The theory of the Alias Second Amended Complaint filed before Judge Banks was in equity seeking recovery of any benefit realized by Salt Lake County. The later amendment was complete in and of itself.

In Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 222 v. Motor Cargo, 530 P2d 807 (Utah 1974), this Court stated:

"The law is overwhelming to the effect that when an amended complaint, complete in and of itself, is filed, the former complaint is functus officio and cannot be used for any purpose." (Emphasis supplied)

In Sheay v. Roman Catholic Archbishop of San Francisco, 122 P2d 60 (1942), the plaintiff had obtained a judgment by default. Plaintiff then filed an amended complaint. The Court, in allowing the amendment referred to the general rule that when a complaint is amended in substance, it operates to open a default. Not only did the filing of the Amended Complaint vacate the default, it superceded the original Complaint, which dropped out of the case and ceased

to have any affect as a pleading or as a basis for a judgment. In Captain v. Los Angeles Wrecking Co., 215 P2d 532 (1950), the Court concluded:

"Furthermore, the Court was without power to permit the filing of a second amended complaint without first vacating the judgment which had been entered on June 29th."

In the instant case, Granite filed two Amended Complaints after they had been granted Partial Summary Judgment. The previously granted Partial Summary Judgment became a nullity and was of no force or effect. Granite was required to prove its entire case on its "Alias Second Amended Complaint" and could not, therefore, rely upon the prior Partial Summary Judgment for any purpose.

However, even if the prior Partial Summary Judgment were valid and enforceable, Granite failed to prove any unjust enrichment of County at its expense. With respect to Granite's First Cause of Action, there was no evidence in the record to show that the then Treasurer, who was not a party to the action, invested any collected funds at interest. Treasurer Monson did not take office until 1975, and since there was no evidence that any party other than the Treasurer was an active party, County could hardly be held responsible for any act committed by someone not before

the Court, and, likewise, Treasurer Monson could not be held responsible for matters taking place prior to the time he assumed office.

Granite's own Exhibits P-2, P-3, and P-4, further supported the Trial Court's finding that there was no unjust enrichment of the County. Exhibits P-2 and P-3 show the actual collection times for the years in question. They further showed that even though collections may have been credited on the 29th or 30th of November, the funds were in fact collected much later--in December. A comparison of those Exhibits to P-4, also introduced by Granite, established that monies were being turned over to Granite as they were being collected. Plaintiff, Granite's own Exhibits, clearly showed that the Treasurer had in fact performed better than his predecessor in office. Exhibit P-10, introduced by Granite, further established that final settlement for the years 1975, 1976, and 1977, was made by the Statutory deadline of March 31st.

Granite's own witness, William Sampson, testified that he could not say how much of Granite's money, if any, was on deposit on any given date. His approach was to take the total received at the end of the year or by settlement date, and then deduce backwards. This approach was purely

hypothetical and was not supported by any facts except for the year end total. He did not know whether the money on deposit belonged to Granite or the other 49 taxing entities. He did not know when the monies were, in fact, received.

The evidence further indicated that there were times when Granite, through the Treasurer's policy of advancing funds, received as much as 92% of the total monies collected for all taxing districts, even though Granite's share was less than 20% of the total (T-152-168). For these reasons, the Trial Court correctly concluded that Salt Lake County had not been enriched at the expense of Granite School District. Therefore, even if the Partial Summary Judgment were enforceable, Granite failed to prove that it was injured by the Treasurer's actions or that the County received a benefit at the expense of Granite.

## POINT II

### GRANITE'S CLAIMS AGAINST SALT LAKE COUNTY AND THE COUNTY TREASURER WERE BARRED BY THE DOCTRINE OF GOVERNMENTAL IMMUNITY.

Immunity on an action for damages arising out of governmental activities is absolute unless waived by Statute; likewise, strict procedural compliance with presentation of claim Statutes is prerequisite of bringing

suit and, finally, a suit must be brought within the time prescribed by Statutes of Limitation. Judicial interpretation concerning each of these requirements is replete in Utah law with the exception of a direct holding as to whether immunity itself is waived as between political subdivisions.

As to procedural matters, including presentation of claims, the Statutes of Limitation, Statutory law binds public as well as private parties. The evidence is uncontroverted that Granite did not file a Notice of Claim with Salt Lake County for any of the years in question.

As to legal status of immunity itself, one could take the obvious approach by stating that immunity as between political subdivisions is not waived because there is no Utah Statute providing such a waiver. Indeed, this would comport with the universal rule. Perhaps the reason for a dearth of direct authority on the matter is that it has been thought settled. However, California has held that all Statutes concerning immunity, presentation of claims and limitations on actions are applicable as between political subdivisions, and Respondents submit this is a reasonable interpretation. Any other interpretation creates great dif-



ficulty in delineating when Statutes of Limitations begin to run. State Health Department v. Imperial County, 153 P2d 957 (Cal. App. 1944); Veteran's Welfare Board v. City of Oakland, 169 P2d 1000, 1007 (Cal. App. 1946).

In the Trial Court, the County has extensively argued that Granite has no remedy against it for injuries that may have occurred pursuant to the County's governmental taxing activities or pursuant to discretionary acts of the County Treasurer. However, if for purposes of argument, one assumes immunity under the Statute has been waived, then Granite is nevertheless barred because it did not file a Notice of Claim. See Crowder v. Salt Lake County, 552 P2d 646 (Utah 1976) and extensive citations therein. Section 63-30-13, U.C.A., 1953, state unequivocally:

"A claim against a political subdivision shall be forever barred unless notice thereof is filed within ninety days after the cause of action arises. . . ." (emphasis added)

In Varoz v. Sevey, 29 U.2d 158, 506 P2d 435 (Utah 1973), in upholding the dismissal of a wrongful death action by a minor when the notice of claim was filed after ninety days had elapsed, the Court said:

"From the language of the Statute it is quite clear that the Legislature intended to make the filing of a timely notice of claim prerequisite to maintaining an action."

In Roosendall Construction & Mining Corporation v. Holman, 28 U.2d 396 (1972), the Court, in construing the filing of a claim requirement as it relates to the State and affirming dismissal for failure to file, stated:

"As to the plaintiff's claim for damages it must proceed, if at all, pursuant to the provisions of Title 63, Chapter 30, U.C.A., 1953, known as the Governmental Immunity Act. A prerequisite in pursuing a claim against the State or its officers is compliance with. . . (filing of claim within one year). . . It appears the plaintiff's complaint is fatally defective in that it does not allege compliance with that section." (emphasis added)

Even assuming plaintiff's complaint would be considered notice of claim, for which there is no authority, the suit is barred because it was not initiated within ". . . ninety days after the cause of action (arose). . ."

Granite commenced its action on November 25, 1975, which was at least six months after its Second Cause of Action arose and at least eighteen months after its First Cause of Action arose. Had Granite first filed a claim at the time it commenced this suit, it would have been barred by not filing a timely claim. How then can Granite maintain a suit when it cannot meet the requirements for even filing a claim, a prerequisite to suit?

Furthermore, allowing suit without first requiring the filing of a claim has the effect of permitting a plain-

tiff to extend the Statute of Limitations. The limitation period on actions brought under the Utah Governmental Immunity Act is at best one year and three months. Section 63-30-15, U.C.A., 1953, reads:

"If a claim is denied, a claimant may institute an action in the district court against the governmental entity in those circumstances where immunity from suit has been waived as in this Act provided. Said action must be commenced within one year after denial or the denial period as specified herein."

In Utah, the State and its political subdivisions are subject to Statutes of Limitations. See Section 78-12-33, U.C.A., 1953, and annotations thereunder.

Sequentially then, under the Utah Governmental Immunity Act, three conditions must be met if plaintiff is to have a remedy: (1) the cause of action must be a Statutory exception to immunity; (2) a timely notice must be filed; and (3) suit must be brought within the time prescribed. Granite's suit failed to meet any of the aforesaid conditions.

### POINT III

GRANITE HAS NO REMEDY AGAINST SALT LAKE  
COUNTY EVEN IF THE UTAH GOVERNMENTAL  
IMMUNITY ACT IS NOT APPLICABLE.

Common law sovereign immunity bars recovery against

Salt Lake County on cause of action for damages arising out of governmental activity. Johnson v. Salt Lake County Cottonwood Sanitary District, 20 U.2d 389, 438 P2d 706 (1968). Granite has not contested that tax matters are governmental. However, assuming common law immunity is waived, a plaintiff must nevertheless file a claim before filing suit. State v. Dixon, 22 U.2d 58, 448 P2d 716 (1968); Edwards v. Iron County, 531 P2d 476 (Utah 1975). In Edwards, the Court stated:

"No notice of claim was filed by plaintiff with the County. The plaintiff filed her complaint on June 7, 1973, and a summons was served on September 6, 1973. The first notification of plaintiff's claim came when these proceedings were initiated. The Trial Court dismissed the Complaint on the grounds that the plaintiff had failed to file a notice of a claim as provided for in Section 63-30-13, U.C.A., 1953, which states that a claim against a political subdivision shall be forever barred unless notice thereof is filed within 90 days after the cause of action arises. The fact that employees of the county knew of plaintiff's injuries at the time they occurred does not dispense with the necessity of filing a timely claim. (Varoz v. Sevey, 29 U.2d 158, 506 P2d 435) The plaintiff's claim would also be barred by the provisions of Section 17-15-10, U.C.A., 1953.

The filing of a complaint with the clerk of the district court, even though done one day before the year had elapsed would not comply with the requirements of filing a claim as required by Section 17-15-10, U.C.A., 1953. . ."

Section 17-15-10, U.C.A., 1953, reads:

"The board of county commissioners shall not hear or consider any claim of any person against

the county, nor shall the board credit or allow any claim or bill against the county, unless the same is itemized, giving names, dates and particular service rendered, or until it has been passed upon by the county auditor. If the claim is for service of process, it shall state the character of process served, upon whom, the number of miles traveled; if for materials furnished, to whom, by whom ordered, quantity and price agreed upon. Every claim against the county must be presented to the county auditor within a year after the last item of the account or claim accrued. In all cases claims shall be duly substantiated as to their correctness and as to the fact that they are justly due. If the board shall refuse to hear or consider a claim because it is not properly made out, it shall cause notice of the fact to be given to the claimant or to his agent, . . . ." (emphasis added)

Upon receiving the claim, the County Auditor has certain Statutory duties to perform. Section 17-19-1 reads:

"All persons holding claims against a county must present the same to the county auditor, and he shall investigate and examine into all such claims, and report the same, together with his findings, to the board of county commissioners at the next regular session after such investigation shall have been completed, with his approval or disapproval, endorsed thereon; and he shall keep, in a book kept for that purpose, a complete record of all such claims and of his action thereon and the reasons for the same, and the action of the board thereon. All bills, claims, accounts or charges for materials of any kind or nature that may be purchased by or on behalf of the county by any of the county officers or contracted for by the board of county commissioners shall be investigated, examined and inspected by the county auditor, and he shall endorse his approval or disapproval thereon before any warrant for the payment of the same can be drawn."

Finally, it is the duty of the County Attorney to

". . .oppose all claims and accounts against the county when he deems then unjust or illegal." Section 17-18-2, U.C.A., 1953.

With respect to such claims applicable Statute of Limitations, similar to that governing the Utah Governmental Immunity Act apply to suits brought against the County. Section 78-12-30, U.C.A., 1953, reads:

"Actions on claims against a county, city, or incorporated town, which have been rejected by the board of county commissioners, city commissioners, city council or board of trustees, as the case may be, must be commenced within one year after the first rejection thereof by such board of county or city commissioners, city council or board of trustees."

County and Treasurer urge upon this Court that Granite's remedy against it must fail for want of waiver of sovereign immunity, failure to file a timely claim and by reason of the Statute of Limitations.

Allowing the suit to proceed without the prerequisite review and determination by County officials constitutes a judicial intrusion into government. The jurisdiction of the Court in the instant matter attaches only after the County has acted or failed to act on a claim properly filed. The Trial Court, by entertaining this suit, prematurely precluded the County's elected officers from

exercising duties accorded them by law.

#### POINT IV

THE STATUTORY DUTIES OF SECTION 53-7-10, U.C.A. (1953) AND 59-10-66, U.C.A. (1953), ARE DIRECTORY AND SUBSTANTIAL COMPLIANCE BY THE TREASURER IS SUFFICIENT COMPLIANCE.

In Point II of its Brief, Granite argues for strict compliance with the Statutory deadlines involved in this case and then attempts to distinguish four earlier Utah cases dealing with the subject. However, Granite completely ignores this Court's more recent case of Kennecott Copper Corp. v. Salt Lake County, 575 P2d 705 (Utah 1978), which held similar Statutory deadlines to be directory rather than mandatory and therefore, substantial compliance to be sufficient. The guidelines set down by this Court in Kennecott are equally applicable to the instant case. "The most fundamental one is that the Court should give effect to the intention of the Legislature." In the instant case, the legislative intent was to set the time frame within which to collect, turn over, and finally account for property tax revenues. That intent has not been frustrated by the Treasurer's actions herein. In fact, the Trial Court specifically concluded that he had performed his duties in accordance with the Statutes governing his office (T-435). There

is no indication in the Statutes governing the Treasurer's office that would indicate that the Legislature intended that an untimely performance on the part of the Treasurer would render his actions illegal. There is no indication that the Legislature intended that the County become liable for an untimely performance by the Treasurer, if, in fact, his performance was untimely. It is respectfully submitted that under the facts of this case and this Court's ruling in Kennecott, supra the Treasurer has fully complied with his Statutory duties and there is therefore no basis upon which to assert liability to Granite.

#### POINT V

COMMON LAW PRINCIPLES AND THE UTAH MONEY  
MANAGEMENT ACT OF 1974 DENY GRANITE A  
REMEDY AGAINST THE COUNTY TREASURER FOR  
DAMAGES AND LIMIT GRANITE'S REMEDY TO A  
FORFEITURE OF THE TREASURER'S SALARY.

In applying common law principles of immunity from liability, the Utah Supreme Court stated in Anderson v. Granite School District, 17 U.2d 405, 413 P2d 597 (1966) at 599:

"In common with other public officers, they (defendant school board members) have authority to do whatever is reasonably necessary in carrying out duties imposed upon them. It would be impractical and unfair to require them to act at their own risk. This would not only be disruptive of the



proper functioning of public institutions, but undoubtedly would dissuade competent and responsible persons from accepting the responsibilities of public office. Accordingly, it is the settled policy of the law that when a public official acts in good faith, believing what he does to be within the scope of his authority and in line with his duty, he is not liable for damages even if he makes a mistake in the exercise of his judgment."

Immunity from liability for a mistake in judgment  
". . . extends to errors in the determination of both of law, and of fact." Logan City v. Allen, 44 P2d 1085, 1087 (Utah 1935).

In Board of Education of Nebo School District v. Jeppson, 74 U. 576, 280 P. 1065 (1929) the School Board sued the County Treasurer and his surety for a decrease in its tax monies occasioned by an irregular or void abatement. In denying liability, the Court said at 74 U. 587, 588:

" . . . there are instances in which a public officer who in good faith and in a perplexing situation, makes an erroneous decision as to his duty and acts thereon and thereby violates the law will not be held liable. . . Such a case is Jefferson County v. Ross, 196 Ky. 366, 244 S.W. 793. In this case Ross, a tax collector, in good faith, and in a perplexing situation as to the rule of law governing the matter, paid over to the State auditor certain taxes which should have been paid over to the school board. It was held that the tax collector was not liable to the school board for diverting the funds. . . "

Granite contends that judgment and discretion are not required in disbursing tax monies even though at least

three different Statutes and the State Tax Manual are contradictory: Section 53-7-10, U.C.A., 1953, provides turn-over of funds ". . .within thirty days after it is collected,"; Section 59-10-66, U.C.A., 1953, provides ". . .on the first day of each month, all monies in his hands collected," and Section 51-4-2, U.C.A., 1953, provides ". . .on or before the tenth day of each month. . .funds received or collected. . .within the month last past," and the Tax Manual states: ". . .January 1 and monthly thereafter."

Respondents urge that in choosing the Statute or Rule to follow, the Treasurere necessarily selects among alternatives. Whenever alternatives are present, judgment and discretion are operative, notwithstanding Granite's assertions to the contrary.

In addition, whether or not the County Treasurer invests funds, including tax monies, is entirely discretionary, Section 51-7-11, U.C.A., 1953, as are the types of investments he makes so long as they are within Statutory guidelines. Sections 51-7-11 and 51-7-17, U.C.A., 1953.

Also, because there is no Statute on the subject,

Respondents contend that the Treasurer, confronted with the inability or impracticability of apportioning interest on tax monies among the 40 taxing districts, was acting both with discretion and in good faith when said interest was transferred to the County's general fund.

The Utah Money Management Act of 1974, 51-7-1, et seq., U.C.A., 1953, further limits the liability of the County Treasurer in two ways. First, he and his bondsman are released from liability for any loss of public funds occasioned by investments made in conformity with the Act, unless the loss is the result of malfeasance. Section 51-7-15, U.C.A., 1953. Consequently, any interest "lost" by Granite is governed by this provision and Granite did not allege or prove malfeasance.

The second limitation is brought about by the 1974 amendment to Section 51-4-2, U.C.A., 1953.

The penalty imposed by Statute on a County Treasurer for failure to settle or make payments to the State is three months forfeiture of salary. 59-10-69, U.C.A., 1953:

"Every county treasurer who neglects or refuses to make payment as herein required shall forfeit three months salary. . ." (emphasis added)

The "as herein required" references Section 51-4-2,

U.C.A., 1953, which was amended by Utah State Money Management Act of 1974. Prior to the Act, Section 51-4-2 only applied to monies the County Treasurer was required to pay the State. The amendment expanded the requirement to payments made by the County Treasurer to all political subdivisions.

Respondents therefore submit that it was the intention of the Utah State Legislature to provide all political subdivision with the same recourse as the State--a forfeiture of salary for the failure of the County Treasurer to remit tax payments in a timely manner.

#### POINT VI

SALT LAKE COUNTY IS NOT A TRUSTEE OF PLAINTIFF'S TAX MONIES, NOR IS THE COUNTY TREASURER THE AGENT OF SALT LAKE COUNTY IN THE COLLECTION OF SAID FUNDS, NOR IS SALT LAKE COUNTY LIABLE FOR OFFICIAL ACTS OF THE COUNTY TREASURER IN DISBURSING THOSE FUNDS.

Granite consistently muddles the role of Salt Lake County, acting through its Board of Commissioners and the role of the County Treasurer with respect to tax matters.

The Findings of Fact and Conclusions of Law supporting the Partial Summary Judgment now relied upon by Granite in its appeal, do not even mention the defendant Salt Lake County. Likewise, all of the Statutes quoted by

Granite in its attempt to demonstrate liability refer solely to the duties imposed on County Treasurers by the State Legislature. Unfortunately, both factually and legally, Granite persists in concluding that Salt Lake County has breached a duty to Granite although said County had nothing to do with the matters complained of by Granite.

Both Statutes cited by Granite concerning the disbursements of school district tax money, Section 53-7-10 and Section 59-10-66, U.C.A., 1953, relate to the Treasurer's duty to collect and disburse tax money. The Board of Commissioners' Statutory role is only to establish the tax levy. Furthermore, the Board of Commissioners does not supervise the activities of a Treasurer in performing his official tax duties. Section 11, Article XIII, of the Constitution of Utah, grants that prerogative to the Utah State Tax Commission:

"The State Tax Commission shall administer and-supervise the tax laws of the State."

Pursuant to the aforesaid Constitutional mandate, the Utah State Legislature has delegated the following powers and duties to the Tax Commission. Section 59-5-46, U.C.A., 1953:

"(3) To prescribe such rules and regulations as

it may deem necessary, not in conflict with the Constitution and laws of the State, to govern county boards and officers in the performance of any duty in connection with assessment, equalization and collection of general taxes."

"(9) To have and exercise general supervision over the administration of the tax laws of the State, over assessors and over county boards in the performance of their duties as county boards of equalization and over other county officers in the performance of their duties in connection with assessment of property and collection of taxes, to the end that all assessments of property be made just and equal, at true value, and that the tax burden may be distributed without favor or discrimination."

"(11) To confer with, advise and direct county treasurers and assessors in matters relating to the assessment and equalization of property for taxation and the collection of taxes, and to provide for an hold annually at such time and place as may be convenient to district or State convention of county assessors to consider and discuss matters relative to taxation, uniformity of valuation, and changes in the law relative to taxation, and methods of assessment. Every county assessor called to attend such district or state convention shall attend at the time and place designated by the tax commission. The traveling expense of each county assessor called to attend such convention shall be a charge against the county and paid in the same manner as other claims against the county."

"(12) To confer with, advise and direct other county officers charged by law with duties relating to the assessment and equalization of property for taxation and the collection of taxes, and to provide for and hold at such times and places as may be deemed necessary district or state conventions of such officers for the consideration and discussion of matters relative to taxation, uniformity of valuation, and changes in the laws relative

"Suppose any one of the school district officers should embezzle funds or destroy or appropriate to his own use any other property of the corporation, could the county, or the county commissioners in its name and behalf, institute and maintain an action to recover the same? We think no one will seriously so contend. A conclusive answer to such an action is that the county has nothing to do with either the funds or officers of the school corporation or has nothing to do with either the funds or officers of the school corporation or has any interest in their funds.

For convenience the county treasurer is charged with the duty of collecting all moneys derived from tax action in his county, including school taxes. After collecting them, he must account for them. The Legislature could have required him to account to the officers of the high school district, or to the state superintendent of schools, or to the county commissioners and to the state superintendent, as was done. . .In our judgment, when the county treasurer has paid the money to the school district treasurers, as required by the statute, he has discharged the full duty imposed upon him by law respecting school funds."

With respect to trust law, and cases construing the same, the Treasurer may indeed be a trustee of plaintiff's tax monies to the same extent as he may be a trustee with respect to 40 other taxing districts, including Salt Lake County. However, Salt Lake County is not the trustee, and if any breach of trust occurred, the breach was committed by the Treasurer, not the County. Further, the governing body of the County, its Board of Commissioners, was never informed by Granite that the Treasurer was not performing as

required by law. At most, Salt Lake County or its general fund is the unwitting recipient of interest alleged to have been earned by the Treasurer on Granite's tax money and, even as to such money, Granite admits ". . .because of the county's (sic) investment policies and the commingling of funds belonging to various governmental units, the actual interest earned is uncertain." (T-199) Further, as set forth in Point I of this Brief, Granite failed to introduce any evidence that would show that any interest was earned on funds belonging to Granite.

Furthermore, the Board of Commissioners not only has no duty to invest money, whether its own or Granite's, it has no right to invest funds. That right lies with the Treasurer. State Money Management Act of 1974, Section 51-7-1, et seq., U.C.A., 1953. Even so, the Treasurer's right to invest is just that--a right; he is not required by law to invest public money. Section 51-7-17, U.C.A., 1953. Granite's assertion to the contrary is without foundation. Granite's consistent references to laws concerning private fiduciaries are irrelevant. The duties of both the Board of Commissioners and the Treasurer are determined by Statute.

With respect to its complaints pertaining to the



Treasurer on tax matters, Granite perhaps would be better advised to charge the State of Utah with a breach of duty rather than Salt Lake County, since the State Tax Commission has specific Statutory supervision over the Treasurer in tax matters, as noted earlier, and Section 7, Article X, of the Utah Constitution reads:

"All public School Funds shall be guaranteed by the State against loss or diversion."

Granite's references to Pomona City School District v. Payne, 50 P2d 822 (Cal. App. 1955) and other California cases as supportive of its trust and interest theories have little relevancy. Under the California Depository Act, the school district was required to keep its funds on deposit in the County Treasury and by law the County Treasurer was required by Act to pay interest on those funds.

Similarly, the case of State of Missouri ex rel. Fort Zumwalt v. Dickleslen, 576 So2d 532 (Mo. 1979) is not applicable to the instant case because Missouri, like California, had a specific Statute that dealt with the subject of interest on school district funds. Utah has no such Statutory requirement. Mears v. Little Rock School District, 593 S.W.2d 42 (Ark. 1980), is also distinguishable. In that case, Pulaski County Quorum Court

passed an ordinance that had the effect of allowing the County to use all tax monies to earn interest. The Supreme Court determined such an Ordinance to be illegal. In the instant case, there is no evidence to show that the County or the Treasurer deliberately held onto tax funds to generate interest. The evidence is that he used his best efforts to ascertain whose money it probably was and then made advancements. The Court in Mears further determined that the Ordinance was contrary to a specific provision of the Arkansas Constitution. No such challenge exists in the case at bar.

In the instant case, Granite was never able to show how much, if any, of its monies were on deposit at any given time. The money was coming in from all taxing districts, advances were being made based upon previous years' performance. Finally, in Mears, the Court relied on a specific act by the Arkansas Legislature which specifically prohibited the County from passing:

"(c) Any legislative act that applied to or affect the public school system except that a County government may impose an assessment where established by the General Assembly, reasonably related to the cost of any service or specific benefit provided by County government. . ."

593 S.W. 2d 42 at page 44. No such provision or prohibition

has been asserted in the instant case. It is therefore submitted that the cases cited by Granite are not controlling in the instant action.

Finally, even assuming the County Treasurer is liable to Granite for failure to perform his duties as required by law, Granite has no remedy against Salt Lake County. It is, and has been the law in Utah since Statehood, that the sole remedy for the deliction of a public official in performing duties imposed upon him by Statute is to proceed against said official and his surety. Section 52-1-7, U.C.A., 1953, reads:

"The official bond of a public official shall be deemed a security to the state, county, city, town, school district or other municipal or public corporation, as the case may be, and also to all persons severally, for official delinquencies against which it is intended to provide."

Section 52-1-8, U.C.A., 1953, states:

"When a public officer by official misconduct or neglect of duty shall forfeit his bond or render his sureties liable thereon, any person injured by such misconduct or neglect, or who by law is entitled to the benefit of the security, may maintain an action thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled."

Section 52-1-11, U.C.A., 1953, states:

"Whenever, except in criminal prosecutions, any special penalty, forfeiture or liability is imposed upon any officer for nonperformance or malperfor-

mance of his official duties, the liability therefor attaches to the official bond of such officer."

The legal test for the application of the foregoing provisions is stated in Bowman v. Hayward, 1 U.2d 131, 262 P2d 957 (1953):

"The test should be: would he (the public officer) have acted in the particular instance if he were not clothed with his official character, or would he have so acted if he were not an officer? If he assumed to act as an officer--whether under valid or void process, or under no process whatever--the bondsman should be held, as he is held, for they are the sponsors of his integrity as an officer while acting as such."

Most obvious in the case at bar is the fact that the collection and disbursement of tax money is an official act of an officer--the Treasurer.

As the Utah Supreme Court succinctly stated in applying the rule to the Sheriff in Sheriff of Salt Lake County v. Board of Commissioners, Supra:

"Certain it is that the board of commissioners is not nor are any of its members in any sense civilly or otherwise liable for the official acts of a deputy sheriff but the sheriff is so civilly liable."

The public policy underlying the aforesaid Statutes and Court ruling is to protect the public entity and its taxpayers from any liability that might result from the deliction of a public officer. The County and the public

are not insurers of the officer's conduct--that is the legal role of his sureties on his bond.

POINT VII

GRANITE IS BARRED FROM RECOVERING DAMAGES  
BY REASON THAT THEY ARE SPECULATIVE OR  
CONSEQUENTIAL.

Granite's recovery is barred by sovereign immunity, whether common law or Statutory, because actions for damages are not permitted with respect to governmental functions unless there is an express Statutory waiver, and no waiver exists as to speculative or consequential damages. Holt v. Utah State Road Commission, 30 U.2d 4, 511 P2d 1286 (1973); State v. Tanner, 30 U.2d 19, 512 P2d 1022 (1973).

Granite's contentions that damages should be measured by what Respondents could have made or should have made, or what Granite could have made or should, are at best consequential and most probably speculative. Therefore, recovery is barred as a matter of law.

#### POINT VIII

GRANITE IS NOT THE REAL PARTY IN INTEREST AS TO A PORTION OF THE RECOVERY IT SEEKS REGARDLESS OF WHETHER ITS REMEDY LIES IN DAMAGES OR EQUITY.

GRANITE, AS A MATTER OF LAW, WAS NOT DAMAGED AS IT ALLEGES.

Assuming for argument that Granite was not barred from recovery on any one or all of the grounds heretofore asserted by Respondents, and assuming Granite could have proved the amount of interest earned on its funds, if any, by County, Granite, nevertheless, is not the real party in interest as to most of the funds involved in this suit.

The percentages next set forth represent those percentages of Granite's total real property tax receipts that are directly tied to the State's Uniform School Fund.

1973-1974 (53%; 1974-1975 (61%); 1975-1976 (62%). (T-279)

The percentages represent that proportion of Granite's total real property tax receipts on which the State of Utah, by law, pays a fixed sum of money. That is, regardless of the amount Granite receives on that proportion of tax monies, the State guarantees and pays to the school district a fixed sum of money. Furthermore, on most of those funds, any tax raised in excess of the State's guarantee must be paid by the County Treasurer into the

State Uniform School Fund. Consequently, as to the above-referenced percentages of total receipts, Granite can have no damage--it received all of the money the law allows.

The relevant provisions of the Tax Code on the minimum school program are set forth below. Section 59-9-2, U.C.A., 1953, states:

"During the first week in August the state tax commission shall ascertain from the state board of education the number of distribution units in each school district in the state of Utah for the current school year, estimated according to the Minimum School Finance Act, and the moneys necessary for the cost of the operation and maintenance of the minimum school program of the state of Utah for the school fiscal year beginning July 1st preceding.

"(1) The state tax commission shall then determine for each school district the amount that should be raised by the minimum basic tax levy that it is required to impose in conformity with the requirements of the Minimum School Finance Act as its contribution toward the cost of the basic state-supported program.

"(2) Each county auditor shall be notified by the state tax commission of the fact that said minimum basic tax levy must be imposed by the school district and of the amount of such levy, to which shall be added such additional amount, if any, due to local undervaluation as hereinafter provided. The auditor shall inform the board of county commissioners as to the amount of such levy. The board of county commissioners shall at the time and in the manner provided by law make such levy upon the taxable property in the school district together with such further levies for school purposes as may be required by each school district to

pay the costs of programs in excess of the basic state-supported school program.

"(3) In the event that the levy applied according to the above schedule will raise an amount in excess of the total basic state-supported school program for any one school district, such excess amount shall be remitted by the county, within which such district is located, to the state treasurer to be credited by him to the uniform school fund to be used for allocation to school districts as are other moneys therein to support the basic state-supported school program. The availability of said money shall be considered by the tax commission in fixing the state property tax levy as provided in the Minimum School Finance Act." (emphasis added)

Section 59-9-2.1 reads:

"In providing for remittance to the state treasurer of any excess collections from the tax levy applied for the basic state-supported program as specified in paragraph (2) [(3)] of section 59-9-2, Utah Code Annotated 1953, as amended by Chapter 35, Laws of Utah 1953, First Special Session said excess amount shall be remitted in the following manner:

"(a) Monthly, as said levies are collected, ninety percent of the amount by which the money then collected, pursuant to said levy, exceeds the estimated total basic state-supported school program of the district upon the basic (basis) of which the levy was computed, shall be transferred.

"(b) As soon after the end of the school year as the school district can determine the actual cost of its basic state-supported school program and inform the county auditor thereof, the county shall determine the actual amount of said excess and remit the same to the state treasurer."

A reciprocal provision in the Education Code,



Section 53-7-18, U.C.A., 1953, provides:

"The state shall contribute to each district toward the cost of the basic state-supported school program in such district that portion which exceeds the proceeds of a minimum basic tax levy of 28 mills imposed by the district.

"In order to qualify for receipt of the state contribution toward the basic program and as its contribution toward its costs of said basic program, each school district shall impose a minimum basic tax levy of 28 mills.

"In the school districts where the proceeds of the minimum basic tax levy equal or exceed the cost of the basic state-supported school program, there shall be no contribution by the state toward the basic program. The proceeds of any said minimum basic tax levy of a school district which exceed the cost of the basic program shall be paid into the uniform school fund as provided by law."

The required minimum basic tax of 28 mills may be adjusted by the State Tax Commission to obtain parity statewide on property tax assessment levels. Illustratively, Granite was only required to levy 27.23 mills in 1974. However, regardless of the amount of money raised by this mill levy, Granite, by law was entitled to receive no more or no less than \$508.00 per weighted pupil unit in 1973-74, and \$560.00 for 1974-75, 75-76. (T-282)

Thus, having received all the law permits, Granite has no damage.

Likewise, in equity, if interest follows principal, interest that might be due is due the State, not Granite.

As the consequence of the state-supported programs above-referenced, Granite received all the money the law allows on those percentages of its total tax income alluded to earlier. Thus, Granite had no damages. Likewise, if it be asserted that interest income follows principal, said interest would be owing to the State and not to Granite.

#### POINT IX

INJUNCTIVE RELIEF UNDER THE FACTS AND  
CIRCUMSTANCES OF THIS CASE WOULD BE TOTALLY  
INAPPROPRIATE AND UNENFORCEABLE.

A review of the allegations of Granite's Alias Second Amended Complaint will quickly demonstrate that Granite did not plead a case for injunctive relief. Nor did the evidence at trial present a basis for injunctive relief. The Legislature has recognized that in the area of taxation, the remedy of injunction should be limited. Section 59-11-14, U.C.A., 1953, as amended, specifically prohibits the remedy of injunction except where the Court determines the alternative remedy to be inadequate. As was stated by Justice Wolfe:

"Taxation proceedings are on a time table. When an agency charged with a series of duties in relation to a taxation plan or program is stopped at the beginning or before the final step in the process of the execution with which it is charged, much public harm may result."

"What would happen to the whole of our taxing machinery if at any stage of the functioning a taxpayer could by injunction or Writ of Prohibition, hold up all succeeding steps. . ."

Sinclair Refining Co. v. State Tax Commission, 139 P2d 663 (1942).

While the above language referred to the Statute relating to payment under protest, the reasoning is equally applicable to the instant action. The Courts should be very careful when dealing with the function of a governmental body such as is involved in this case. Such bodies must be given reasonable latitude of discretion to carry out their responsibilities in an efficient and appropriate manner. See Cottonwood City Electors v. Salt Lake County Board of Commissioners, 499 P2d 270 (1972). Not only is injunctive relief inappropriate in tax cases, it is also disruptive. If the Court were to undertake to fashion some type of injunctive relief against the Treasurer, it would involve itself into the entire tax structure, because the Treasurer's ability to perform his functions is dependent upon the Auditor. The Auditor depends upon the County Commission, which in turn depends upon the Assessor. The Assessor depends upon the Recorder.

The jobs performed by each of the County officials

with regard to taxes in turn are influenced by the Tax Commission. Each time the Treasurer was delayed by the actions of some other body of officer, he would have to involve the Court to avoid being in contempt of the Court's order. The imposition of an injunction against the Treasurer would embroil the Court into an insurmountable task. It is a maxim of equity that the Court will not adjudicate an issue where the problems of fashioning a remedy are so difficult as to be insurmountable. Dixon v. Attorney General of the Commonwealth of Pennsylvania, 313 Fed. Supp. 653 (1970). Similarly, equity will do nothing in vain. Godbolt v. Clinton Sheet Greater Bethlehem Temple, 167 N.W.2d 97. See also Libberman v. Libberman, 130 N.Y.2d 163; Sane v. Montana Power, 20 Fed. Supp. 843. A Court of equity will never assume jurisdiction to prepare a decree dependent for its efficacy on the approval or rejection of some other coordinator or inferior board or tribunal, but only when it can enforce its decree.

The Court would have to depend upon the efficacy of any injunctive relief in this case upon the inferior tribunal of the State Tax Commission, the County Board of Equalization, the Auditor, Assessor, and Recorder. For these reasons, Granite's request should be denied.

POINT X

THE TRIAL COURT ERRED IN DENYING COUNTIES  
EQUITABLE COUNTERCLAIM WHEN THE FACTS  
RELATING TO THE UNJUST ENRICHMENT OF  
GRANITE WERE UNCONTROVERTED.

The Trial Court specifically found that Granite was not unjustly enriched at the expense of Salt Lake County, even though the cost of collecting, apportioning, and distributing tax monies for Granite exceeded the amount paid for such services (T-427).

During the years 1973 thorough 1977, Salt Lake County expended \$1,133,415.00 more to collect Granite's share of taxes than it received from Granite. This evidence was not disputed by Granite.

Granite's Alias Second Amended Complaint and County's Counterclaim are both based upon the equitable theory of unjust enrichment. The County proved that Granite has been unjustly enriched at its expense. Granite failed to prove unjust enrichment of the County at Granite's expense. Since Granite sought equity, it likewise should be compelled to do equity. See Carbon Canal Company v. Sanpete Water User's Association, 425 P2d 405 (1967). For the Trial Court to deny Salt Lake County's Counterclaim when the evidence was uncontroverted ". . . would do violence to the

well-known maxim that he who seeks equity must do equity." Glenn v. Player, 326 P2d 717 (1958).

It is therefore respectfully submitted that the Trial Court's judgment denying Salt Lake County equitable relief on its counterclaim should be reversed and judgment should be entered in favor of County on its Counterclaim and against Granite.

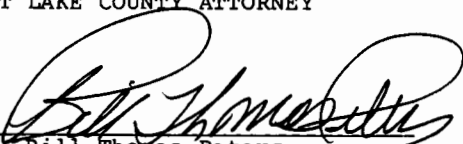
### CONCLUSION

County respectfully submits that the decision of the Trial Court was correct insofar as it concluded that Salt Lake County had not been unjustly enriched at the expense of Granite School District and should therefore be affirmed. However, the evidence was uncontroverted that Granite School District has been unjustly enriched by more than \$1,000,000.00 at the expense of all Salt Lake County taxpayers. This inequity should be remedied. Judgment should be awarded in favor of County on its Counterclaim against Granite for the reasons set forth in County's Brief.

Respectfully submitted this 30th day of March, 1981.

TED CANNON  
SALT LAKE COUNTY ATTORNEY

By



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CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed or delivered true and correct copies of the foregoing BRIEF OF DEFENDANTS/RESPONDENTS/CROSS-APPELLANTS, to M. Byron Fisher and Charles B. Casper, FABIAN & CLENDENIN, Attorneys for Plaintiff/Appellant, 800 Continental Bank Building, Salt Lake City, Utah 84101, postage prepaid, this 30th day of March, 1981.

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